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TELEGRAPHS—DAMAGES FOR MENTAL SUFFERING.—ARKANSAS & L. RY. CO. v. STROUDE, 100 S. W. 760 (ARK.).—*Held*, that in an action for mental suffering alleged to be due to defendant's failure to deliver a telegram to plaintiff, the court properly instructed the jury that, in fixing the amount of plaintiff's damages, they should take into consideration his grief and mental suffering caused by defendant's negligence.

The general rule that mental anguish and suffering, resulting from mere negligence, unaccompanied with injuries to the person, cannot be made the basis of an action for damages, has come down from English courts. *Lynch v. Knight*, 2 H. L. Cas. 577; *Hobbs v. Railroad Co.*, L. R., 10 Q. P. 122. In the United States the question has arisen frequently in such actions against telegraph companies; the decided weight of authority denying recovery. *Cooley on Torts* (3d Ed.) 92. In *Western Union Tel. Co. v. Ferguson*, 157 Ind. 64, it was said that there is no open and practicable means by which such damages can be assessed; that the defendant's hands were tied. Other courts have also declared the damage too vague: *Stansell v. Western Union Tel. Co.*, 107 Fed. 668; *Western Union Tel. Co. v. Hatton*, 71 Ill. App. 63. But in 1881, in Texas a right of recovery was asserted: *So. Relle v. Telegraph Co.*, 55 Tex. 308. This decision has been followed in at least four other states: see, *Mentzer v. Western Union Tel. Co.*, 93 Ia. 752; *Western Union Tel. Co. v. Steenberger*, 107 Ky. 469; *Bryan v. Western Union Tel. Co.*, 133 N. C. 603; *Newport News, etc., R. Co. v. Griffin*, 92 Tenn. 692. In Alabama recovery is allowed if the action is *ex contractu*. *Western Union Tel. Co. v. Kirchbaum*, 132 Ala. 538. In Arkansas the right of recovery is based on statute. *Kirby's Dig.*, section 7947.

TELEGRAPHS—DELAY IN DELIVERY—NOTICE OF DAMAGES.—DEMPSEY v. WESTERN UNION TELEGRAPH CO., 58 S. E. 9 (S. C.).—*Held*, that it cannot be said, as a matter of law, that on a failure of a telegraph company to deliver a telegram "Will be to Perry on morning train; meet me there"—resulting exposure and sickness could not have been anticipated.

TELEGRAPHS—TRANSMISSION OF MESSAGES.—HALSTED v. POSTAL TELEGRAPH CABLE CO., 104 N. Y. SUPP. 1016.—*Held*, that where plaintiff wrote defendant, asking for quotations on certain goods by telegraph, and the message, which was an unrepeatable one, was sent to plaintiff on a blank exempting the telegraph company from liability for mistakes in an unrepeatable message, plaintiff was not entitled to recover in an action in tort for damages arising from a mistake in the message. *Gaynor and Hooker, JJ., dissenting.*

In England, *Dickson v. Rentee's Telegraph Co.*, 3 C. P. D. 1, lays down the rule that no action will lie by the receiver of a telegraphic message for a mistake in message delivery. Almost without exception, the contrary is held in the United States. *Vide, Pearsall v. Western U. Tel. Co.*, 124 N. Y. 256; *Rittenhouse v. Independent Line of Telegraph*, 44 N. Y. 263. And a stipulation by company that it shall not be responsible for errors is void as an attempt to relieve itself of the consequences of its own fault. *Cooley on Torts*, (3d Ed.) 1485. Not so in most jurisdictions, however, if accompanied with provision requiring message to be repeated. See leading case, *Ellis v. American Tel. Co.*, 13 Allen (Mass.) 226; *contra*, as against public policy, *Ayer v. Western Union Tel. Co.*, 79 Me. 493; *Tyler v. Western U. Tel. Co.*, 74 Ill. 168. And the agency doctrine of ratification has in some jurisdictions been relied upon to defeat recovery by a receiver where condi-

tions have been held valid, *e. g.*, *Aiken v. Western U. Tel. Co.*, 5 S. C. 358; in others, as in *Ellis v. American Tel. Co.*, *supra*, receiver has been treated as impliedly assenting to contract of which the conditions were integral part. But in many other states the receiver's remedy lies in tort, *New York, etc., Tel. Co. v. Dryburg*, 35 Pa. 298; *Webbe v. Western U. Tel. Co.*, 169 Ill. 610; and this is the general rule, *Crosswell on the Law Relating to Electricity*, s. 471, 472, in harmony with which the dissenting opinion of *Halsted v. Postal Tel. Co.*, *supra*, was rendered. See also, *Thompson on the Law of Electricity*, s. 427-430.

WILLS—HOLOGRAPHIC WILLS—CONSTRUCTION.—*CARROLL v. ADAMS, ET AL.*, 105 N. Y. SUPP. 967.—*Held*, where testatrix executed a holographic will, by which she divided her estate into three parts and gave the first to the children of her sister A, deceased, and the second to her sister D, deceased, the bequest of the second share did not fail because D was dead at the time the will was made, but such share passed to D's children.